

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

WANI J. KOSE,

Plaintiff,

v.

H. SIEZ, et al.,

Defendants.

Case No.: 1:23-cv-00557-KES-CDB

**ORDER REGARDING OUTSTANDING  
DISPOSITIONAL DOCUMENTS**

**ORDER SETTING STATUS CONFERENCE**

**ORDER DENYING REQUEST FOR THE  
APPOINTMENT OF COUNSEL**

(Doc. 53)

Plaintiff Wani J. Kose is appearing pro se and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. section 1983. This action proceeds on Plaintiff's Eighth Amendment failure to protect claim against Defendant Saiz and his Eighth Amendment deliberate indifference to serious medical needs claims against Defendants Negre and Walker.

**I. RELEVANT BACKGROUND**

On April 29, 2025, the Court issued its Second Scheduling Order. (Doc. 44.) A pretrial conference was set for November 10, 2025, at 3:30 p.m., and jury trial was scheduled for January 21, 2026, at 8:30 a.m., before assigned District Judge Kirk E. Sherriff. (*Id.*)

On July 25, 2025, defense counsel Patricia M. Kealy filed a document titled "Plaintiff's Notice of Voluntary Dismissal with Prejudice of Defendants Negre and Walker." (Doc. 45.)

On July 28, 2025, defense counsel filed a Stipulation for Voluntary Dismissal with

1 Prejudice concerning Defendant Saiz. (Doc. 46.)

2 On July 31, 2025, the Court issued its Order Regarding Plaintiff's Notice of Voluntary  
3 Dismissal and the Stipulation to Voluntary Dismissal. (Doc. 47.) It determined Plaintiff could not  
4 "unilaterally dismiss Negre and Walker from this action under Rule 41(a)(1)(A)(i)" considering  
5 their November 7, 2023, answer to the operative complaint, but noted "the parties may jointly  
6 stipulate to dismissal of Negre and Walker pursuant to Rule 41(a)(1)(A)(ii)." (*Id.* at 2.) Further,  
7 the Court indicated it would "take no action on the filings of July 25, 2025, and July 28, 2025, to  
8 allow the parties to file a single stipulation to voluntary dismissal of this action against  
9 Defendants." (*Id.*) The parties were directed to file a single stipulation no later than September 2,  
10 2025, and were further ordered to file a status report on that same date in the event a stipulation  
11 could not be timely filed. (*Id.* at 2-3.)

12 Following the filing of a status report on September 2, 2025 (Doc. 48), the Court extended  
13 the deadline for submission of a stipulation to voluntary dismissal to September 16, 2025. (Doc.  
14 49.) Further, the Court modified its earlier order to allow the parties to "file two separate  
15 stipulations provided those stipulations comport with Rule 41(a)(1)(A)" of the Federal Rules of  
16 Civil Procedure. (*Id.* at 2-3.) On September 16, 2025, the deadline for filing dispositional  
17 documents was extended to September 30, 2025, by Court order. (Doc. 51.)

18 On September 29, 2025, Plaintiff filed a document titled "Wittness [sic] Listing,"  
19 docketed as a motion for the attendance of witnesses at trial. (Doc. 52.) That same date, Plaintiff  
20 filed a document titled "Status Summary," docketed as a motion for extension of time. (Doc. 53.)

21 Also on September 29, 2025, defense counsel sent an email to Cori Boren, the  
22 undersigned's courtroom deputy, advising a settlement dispute had arisen and inquiring into  
23 whether the undersigned would consider holding a conference in this matter to address that  
24 dispute.

## 25 II. DISCUSSION CONCERNING SETTLEMENT

26 First, the Court acknowledges and shares defense counsel's ex parte communication of  
27 September 29, 2025. (*See* Ex. A, attached.) The Court finds the communication improper for it  
28 addresses matters beyond procedure and/or scheduling. It concerns contact and conversations

1 between Plaintiff and defense counsel regarding settlement of this action.

2 Next, the Court notes that although the deadline for submission of dispositional  
3 documents is today, September 30, 2025, it is clear from both defense counsel's email  
4 communication and Plaintiff's filings of September 29, 2025, that those documents are not  
5 forthcoming. As to the latter, Plaintiff's "Status Summary" reveals his claimed confusion  
6 concerning any dismissal with prejudice of Defendant Saiz (Doc. 53 at 1 ["I had no idea that I  
7 would be dismissing H. Siez [sic] in a separate document with prejudice"] & 2 [stating he "never  
8 agreed" to dismiss "all three" defendants with prejudice]),<sup>1</sup> advises that he refused to sign revised  
9 dismissal documents because he wanted settlement funds to be provided "to a third party" rather  
10 than into his inmate trust account (*id.*) and because "a c/o was used to middleman the signing  
11 which is very dangerous," claiming he and his family's lives "were threatened by the Green  
12 Wall" (*id.* at 2),<sup>2</sup> and finally, Plaintiff asks the Court to appoint counsel "due to [his acute] status"  
13 (*id.*).

14 Notably, this action is scheduled for a pretrial conference on November 10, 2025, at 3:30  
15 p.m., and a jury trial on January 21, 2026, at 8:30 a.m., before District Judge Kirk E. Sherriff.  
16 (*See* Docs. 39, 43 [minute order], & 44.) Considering its present procedural posture,<sup>3</sup> the  
17 undersigned will set this matter for a status conference. The parties shall appear and shall be  
18 prepared to address the following: (1) the status of the signed settlement agreement, and (2) any  
19 necessary logistics related to the parties' preparation of this case for trial.

### 20 **III. PLAINTIFF'S REQUEST FOR THE APPOINTMENT OF COUNSEL**

21 As noted above, Plaintiff requests this Court appoint counsel to represent him in this

22  
23 <sup>1</sup> Both documents submitted on July 25, 2025, and signed by Plaintiff on July 17, 2025, clearly indicate the dismissal  
sought was "with prejudice." (*See* Docs. 45 & 46.)

24 <sup>2</sup> Other than Plaintiff's vague and conclusory statements, there is no evidence in this record of any threats "by the  
25 Green Wall" to Plaintiff or his family, nor is there any evidence that "a c/o was used to middleman the signing  
[presumably of the revised dispositional documents]" or, even assuming such use, that it was "very dangerous."  
26 Thus, the undersigned does not further address Plaintiff's allegations.

27 <sup>3</sup> As the parties were previously advised in the Second Scheduling Order issued April 29, 2025, "*[t]he dates set in  
this order are firm and will not be modified absent a showing of good cause, even if a stipulation to modify is filed.*"  
28 Due to the impacted nature of the civil case docket, this Court disfavors requests to modify established dates." (Doc.  
44 at 6, emphasis in original.)

1 action “due to [his acute] status.” The Court declines to do so.

2 Plaintiffs do not have a constitutional right to appointed counsel in section 1983 actions.  
3 *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *rev’d in part on other grounds*, 154 F.3d  
4 952, 954 n.1 (9th Cir. 1998). Nor can the Court require an attorney to represent a party under 28  
5 U.S.C. section 1915(e)(1). *See Mallard v. U.S. Dist. Court*, 490 U.S. 296, 304-05 (1989).  
6 However, in “exceptional circumstances,” the Court may request the voluntary assistance of  
7 counsel pursuant to section 1915(e)(1). *Rand*, 113 F.3d at 1525.

8 Given that the Court has no reasonable method of securing and compensating counsel, the  
9 Court will seek volunteer counsel only in extraordinary cases. In determining whether  
10 “exceptional circumstances exist, a district court must evaluate both the likelihood of success on  
11 the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the  
12 complexity of the legal issues involved.” *Rand*, 113 F.3d at 1525 (internal quotation marks &  
13 citations omitted).

14 First, the Court must evaluate the likelihood of Plaintiff’s success on the merits of his  
15 claims. *Rand*, 113 F.3d at 1525. Here, Plaintiff did not address the likelihood of his success on the  
16 merits of his claims, nor is the likelihood of success evident from the face of his operative  
17 complaint. Simply put, the Court has insufficient information to make such a determination. *See*  
18 *Garcia v. Blahnik*, No. 14cv875-LAB-BGS, 2016 WL 4269561, at \*1 (S.D. Cal. Aug. 15, 2016)  
19 (“Where the court has insufficient information to determine the likelihood of success, the  
20 likelihood of success factor does not support a finding of exceptional circumstances”). And the  
21 fact this action is set for trial does not change that finding. *See Allen v. Beard*, No. 3:16-cv-2713-  
22 MMA-KSC, 2018 WL 5819782, at \*3 (S.D. Cal. Nov. 7, 2018) (finding plaintiff’s claim that  
23 “because the Court set a trial date” a likelihood of success on the merits existed to be  
24 unpersuasive, and noting that “[s]etting a trial date is standard procedure, regardless of the merits  
25 of a party’s claim”).

26 Next, the Court must also evaluate Plaintiff’s ability to articulate his claims pro se in light  
27 of the complexity of the legal issues involved. *Rand*, 113 F.3d at 1525. Here, while Plaintiff did  
28 not address the issue, the Court finds Plaintiff able to articulate his claims considering their

1 complexity. This action proceeds on Plaintiff's Eighth Amendment failure to protect and  
2 deliberate indifference to serious medical needs claims. Neither claim is complex. *See, e.g.,*  
3 *Maldonado v. Merritt*, No. 1:23-cv-00482-JLT-SKO PC, 2023 WL 6751114, at \*3 (E.D. Cal.  
4 Oct. 12, 2023) ("Eighth Amendment deliberate indifference to serious medical needs claims are  
5 not complex"); *Lane v. Beach*, No. 1:20-cv-00147-JLT-GSA-PC, 2023 WL 4936300, at \* 1 (E.D.  
6 Cal. Aug. 2, 2023) ("whether defendant Beach was deliberately indifferent to Plaintiff's serious  
7 medical needs ... is not complex"); *Arroy v. Jeffries*, No. 23-1129, 2023 WL 3010154, at \*4  
8 (C.D. Ill. Apr. 19, 2023) (denying motion for appointment of counsel and finding "Plaintiff's  
9 failure to protect claim is not complex"); *Williams v. Whitehurst*, No. 4:08CV21-SPM/AK, 2008  
10 WL 1766570, at \*1 (N.D. Fla. Apr. 11, 2008) ("Although Plaintiff's claims are serious, they are  
11 not complex nor will he be required to do legal research since the court is familiar with the law on  
12 claims of excessive force and failure to protect"). Notably too, a review of the docket for this  
13 action fails to indicate Plaintiff is unable to articulate his claims considering their complexity.

14 The fact an attorney may be better able to perform research, investigate, and represent  
15 Plaintiff at trial does not change the analysis. There is little doubt most pro se litigants "find it  
16 difficult to articulate [their] claims," and would be better served with the assistance of counsel.  
17 *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). For this reason, in the absence of  
18 counsel, federal courts employ procedures which are highly protective of a pro se litigant's rights.  
19 *See Haines v. Kerner*, 404 U.S. 519, 520 (1972) (holding pro se complaint to less stringent  
20 standard) (per curiam). In fact, where a plaintiff appears pro se in a civil rights case, the court  
21 must construe the pleadings liberally and afford the plaintiff any benefit of the doubt. *Karim–*  
22 *Panahi v. Los Angeles Police Dep't*, 839 F.2d 621, 623 (9th Cir. 1988). The rule of liberal  
23 construction is "particularly important in civil rights cases." *Ferdik v. Bonzelet*, 963 F.2d 1258,  
24 1261 (9th Cir. 1992). Thus, where a pro se litigant can "articulate his claims" in light of the  
25 relative complexity of the matter, the "exceptional circumstances" which might require the  
26 appointment of counsel do not exist. *Wilborn*, 789 F.2d at 1331; *Palmer v. Valdez*, 560 F.3d 965,  
27 970 (9th Cir. 2009).

28 To the extent Plaintiff contends his mental state warrants the appointment of counsel, the

1 Court does not agree. *See Jones v. Kuppinger*, No. 2:13-cv-0451 WBS AC P, 2015 WL 5522290,  
 2 at \*3-\*4 (E.D. Cal. Sept. 17, 2015) (“[c]ircumstances common to most prisoners, such as a  
 3 deficient general education, lack of knowledge of the law, mental illness and disability, do not in  
 4 themselves establish exceptional circumstances warranting appointment of voluntary civil  
 5 counsel”); *Jones v. Stieferman*, 2007 WL 4219169, at \*1 (E.D. Cal., Nov. 29, 2007) (“being  
 6 disabled and requiring use of a wheelchair to assist with mobility is not the type of exceptional  
 7 circumstances which allow the court to request voluntary assistance of counsel”); *see also*  
 8 *Fletcher v. Quin*, No. 3:15-cv-2156-GPC-NLS, 2018 WL 840174, at \*2 (S.D. Cal. Feb. 13, 2018)  
 9 (impairment must be “an incapacitating mental disability” and be supported by “substantial  
 10 evidence of incompetence”); *McElroy v. Cox*, No. 08-1221-JM (AJB), 2009 WL 4895360 at \*2  
 11 (E.D. Cal. Dec. 11, 2009) (“Plaintiff has submitted evidence of incompetence similar to what the  
 12 petitioner submitted in *Allen*. However, there is no nexus between his mental disorder and his  
 13 ability to articulate his claims. Plaintiff’s claim that he suffers from a mental illness which  
 14 prevents him from sufficiently bringing his case is undercut by his pleading”).

15 The test is not whether Plaintiff would benefit from the appointment of counsel; the test is  
 16 whether exceptional circumstances exist. *See Wilborn*, 789 F.2d at 1331. Here, no exceptional  
 17 circumstances exist warranting the appointment of counsel.

#### 18 **IV. CONCLUSION AND ORDER**

19 Accordingly, the Court **HEREBY ORDERS**:

- 20 1. A status conference is **SET for October 17, 2025, at 10:00 a.m.**, via Zoom video  
 21 conferencing. Defense counsel shall make all necessary arrangements to ensure  
 22 Plaintiff’s appearance via Zoom video conferencing from his place of confinement.  
 23 The Court will issue a writ of habeas corpus ad testificandum as appropriate.  
 24 Zoom log in information will be provided by the Court prior to the date set for the  
 25 status conference.
- 26 2. At the status conference, the parties shall be prepared to address the status of the  
 27 signed settlement agreement, as well as any logistical issues or concerns related to  
 28 their preparation for the January 21, 2026, trial before District Judge Sherriff.

3. Plaintiff's request for the appointment of counsel is **DENIED**.
4. Nothing in this order affects the procedures or deadlines outlined in the Court's Second Scheduling Order issued April 29, 2025 (*see* Doc. 44).
5. The undersigned will issue a ruling on Plaintiff's motion concerning the attendance of witnesses at trial after October 13, 2025 (the deadline for the submission of any opposition) and in due course.
6. The Clerk of the Court is **DIRECTED** to terminate the motion for extension of time (Doc. 53) filed September 29, 2025.

IT IS SO ORDERED.

Dated: October 1, 2025

  
UNITED STATES MAGISTRATE JUDGE

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# EXHIBIT A

1 **From:** Patricia Kealy <[Patricia.Kealy@doj.ca.gov](mailto:Patricia.Kealy@doj.ca.gov)>  
2 **Sent:** Monday, September 29, 2025 2:26 PM  
3 **To:** Cori Boren <[CBoren@caed.uscourts.gov](mailto:CBoren@caed.uscourts.gov)>  
4 **Cc:** Joanna Hood <[Joanna.Hood@doj.ca.gov](mailto:Joanna.Hood@doj.ca.gov)>; Angie Brodbeck <[Angie.Brodbeck@doj.ca.gov](mailto:Angie.Brodbeck@doj.ca.gov)>  
5 **Subject:** Kose v. Siez, et al. (Case No. 1:23-cv-00557 KES-CDB) – Request for Conference re Settlement  
6 Dispute

7 Hello,

8 I hope that you are well! I am the DAG assigned to the *Kose v. Siez, et al.* (1:23-cv-00557 KES-CDB)  
9 case. A settlement dispute has arisen in this case and based on my review of Judge Baker's standing  
10 orders, I would like to inquire whether Judge Baker would be open to scheduling a conference with  
11 the parties to resolve this dispute in a manner similar to the procedures set forth for informal  
12 resolution of discovery disputes.

13 The parties negotiated a settlement in this case on July 17, 2025, and Plaintiff contemporaneously  
14 signed the settlement agreement outlining the terms and conditions of the settlement, two separate  
15 stipulations for voluntary dismissal (for different Defendants), and a Payee Data Record (PDR) form.  
16 The settlement was reached by the parties directly without a formal settlement conference before a  
17 magistrate judge. However, since then, several disputes have arisen regarding the completion of all  
18 settlement-related documentation, including a single Stipulation for Voluntary Dismissal of all  
19 Defendants and the PDR form (the one previously completed by Plaintiff was signed in the incorrect  
20 spot). As noted above, the settlement agreement has already been signed and, therefore, does not  
21 need to be signed again.

22 Plaintiff and I have spoken several times by phone and communicated by letters in an attempt to  
23 resolve these disputes. At Plaintiff's request, on Friday, September 26, 2025, I met with Plaintiff in  
24 person at his current institution of incarceration, the California Health Care Facility (CHCF), to  
25 answer additional questions for Plaintiff, show him copies of settlement documents that he had  
26 previously signed, and to retrieve signed copies of the outstanding settlement paperwork, including  
27 the Stipulation for Voluntary Dismissal of all Defendants and a new PDR form. Despite assurances  
28 that he would sign the remaining settlement documents if I made the in-person visit, Plaintiff  
refused to sign them and expressed his desire to renegotiate a settlement in this case.

Therefore, I respectfully request that the Court schedule a conference with the parties and Judge  
Baker to resolve the apparent settlement dispute that has arisen.

Please let me know if there is any additional information I can provide. Thank you in advance for  
your time.

Kind regards,  
Patricia Kealy

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